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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,935	12/09/2003	Mariana Tajada	14552.0001US01	6657
23552	7590	10/18/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			WARE, DEBORAH K	
			ART UNIT	PAPER NUMBER
			1651	

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/731,935

Applicant(s)

TAJADA, MARIANA

Examiner

Deborah K. Ware

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4,5 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) 5,11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1, 4-5 and 11-13 are pending.

#### ***Response to Amendment***

The amendment and remarks filed July 29, 2005, has been received and entered. The extension of time filed July 29, 2005, has also been received.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Election/Restrictions***

This application contains claims 5 and 11-12 drawn to an invention nonelected with traverse in Paper No. 11082004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01. Therefore, claims 5 and 11-12 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention for reasons of record, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on November 8, 2004.

#### ***Claim Rejections - 35 USC § 103***

Claims 1, 4, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP360196185A in view of Gottlieb et al (US Patent No. 3,188,272) for reasons of record in last office action, note pages 4-5, all lines.

Claims are drawn to culture medium comprising monobasic potassium phosphate, ammonium chloride, magnesium sulfate, saccharose and water for

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culturing yeast or fungi. Further the yeast may be selected from *Saccharomyces cerevisiae*.

JP Patent teaches culturing *Saccharomyces cerevisiae* in a culture medium which comprises ammonium chloride, magnesium sulfate, and saccharose, see the abstract.

Gottlieb teaches culture medium comprising monobasic potassium phosphate and water for detecting yeast (*Saccharomyces*). Note column 9, lines 6 and 12.

The claims differ from JP Patent abstract in that monobasic potassium phosphate is not disclosed.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the teachings of JP Patent and Gottlieb in order to provide for a culture medium comprising monobasic potassium phosphate, ammonium chloride, magnesium sulfate, saccharose and water for culturing yeast since all of the ingredients for the culturing and testing are disclosed by the cited prior art. One of skill in the art would have been motivated to combine these disclosed ingredients together in a culture medium because they are taught to be used for culturing yeast.

Thus, one of skill in the art would have expected successful results by their combination together in a culture medium. Furthermore, Gottlieb teach that yeast can be cultured at a pH of 2.3 and 10.4, note column 5, line 30. The culture medium and/or composition thereof would have been expected to be useful for food industry installations because the yeast would have been

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expected to grow on the culture media so disclosed by the cited prior art and thus, their detection in the installations realized via their growth thereupon the culture medium as disclosed by the cited prior art. The claims are rendered prima facie obvious over the cited prior art.

### ***Response to Arguments***

Applicant's arguments filed July 29, 2005, have been fully considered but they are not persuasive. The argument that the JP patent, as cited above, fails to disclose between about 4.5 /l and and about 5.5 g/l of monobasic potassium phosphate is noted, however, Gottlieb et al clearly do teach that monobasic potassium phosphate is useful in a culture medium for yeast.

Albeit the Gottlieb et al disclosure does not teach the range amounts as claimed herein, however, to select for optimal amounts for use in a culture medium under a given set of conditions is clearly within the skill of an ordinary artisan. Furthermore, the cited JP Patent does teach including magnesium ions such as magnesium sulfate in a culture medium. Therefore, one of skill would have been motivated to select for any magnesium ion containing source compound such as magnesium sulfate, magnesium sulfate heptahydrate, and the like.

These compounds while they are different, are well recognized in the prior art at large and to an ordinary artisan to be suitable sources of magnesium ion for use in a culture media. Patent No.(s) 3,391,060 and 5,153,127 are merely cited on the enclosed PTO-892 Form as evidence for this conclusion, and to show as evidence what is general knowledge in the art, and they are not cited

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prior art references in this 103 rejection against the claims herein. To choose a different magnesium ion source such as magnesium sulfate heptahydrate is an obvious modification of the cited prior art given that these two compounds are considered to be functional equivalents in the culture media art. Applicant has provided no unexpected successful result for selecting heptahydrate magnesium sulfate, and selected amounts thereof.

One of ordinary skill in the art would have expected successful results with the selection of a functionally equivalent compound such as heptahydrate magnesium sulfate, therefore. To vary the amounts of well known ingredients in a culture medium is clearly within the optimization skills of an artisan and no unexpected successful results for using these selected amounts for any of the claimed ingredients have been provided by Applicant.

Each of the cited references teach that these ingredients as claimed by Applicant are desirable for use in culture media for culturing yeast and bacteria. One of skill in the art would have been motivated to combine these ingredients because they are well known in the art as taught, or suggested, by the cited references. No unexpected successful result for selecting these ingredients in these amounts as claimed has been obtained. The ingredients are at least suggested to be useful together because they are in a culture medium for the same microorganism: yeast. One of skill would have been motivated in the art to select these ingredients.

Overall, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be

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established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, a phosphate source and magnesium ion source are clearly taught by the cited prior art to be desirable for culture medium useful for yeast.

In addition, Applicant's claims do not necessarily require any particular type of microorganism or any microorganism, for that matter, to be in the culture medium per se. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The cited prior art combination against the claims clearly teach that these ingredients have been included in the culture medium for yeast. Therefore, in the absence of persuasive evidence to the contrary the claims are deemed obvious over the cited prior art of record.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited of record on the PTO-892 Form previously mailed to Applicant. Therefore, the claims are properly rejected.

The reference listed on the enclosed PTO-892 is cited to show the general state of the art.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Deborah K. Ware  
October 15, 2005



DAVID M. NAFF  
PRIMARY EXAMINER  
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